

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**MARIANO SICAROS-QUINTERO,**

**Defendant.**

**CASE NO. 8:07CR19**

# MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's appeal (Filing No. 158) from the Magistrate Judge's order (Filing No. 157) denying the Defendant's motion to continue the trial. Defense counsel has represented that ¶ 2 of the appeal is no longer accurate. Therefore, the remaining reason that the continuance of trial is requested is that defense counsel was, at least at the time the appeal was filed, awaiting a plea agreement.

Pursuant to 28 U.S.C. § 636(b)(1)(A) and NECrImR 57.2, the court has reviewed the order from which this appeal has been taken. In an appeal from a magistrate judge's order on a pretrial matter within 28 U.S.C. § 636(b)(1)(A), a district court may set aside any part of the magistrate judge's order shown to be clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); NECrImR 57.2(c).

The appeal is addressed prior to the response period, because the appeal is not technically ripe for decision until the day of trial and because the nature of the issue in question does not raise a substantial issue of law.

The Magistrate Judge exercised his discretion and denied the motion to continue in his discretion because, as he accurately stated, this trial has already been continued several times. The Magistrate Judge's conclusion is not clearly erroneous or contrary to law.

IT IS ORDERED:

1. The Defendant's appeal from the Magistrate Judge's Order (Filing No. 158) is denied; and

2. The Magistrate Judge's Order denying the Defendant's motion to continue (Filing No. 157), is affirmed.

DATED this 10<sup>th</sup> day of September, 2007.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge